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execution upon the land under a judgment against L. Complainant, to protect his previously-acquired title, was forced to buy in the property at sheriff's sale. In this action upon defendant's bond to recover the damages sustained, *Held*, (1) that although his negligence was not wilful nor so gross as to imply wilfulness, yet defendant was liable; (2) that the cause of action was not barred by the statute of limitations, since it accrued, not when the deed was erroneously recorded, but when the injury resulted to complainant in being deprived of his property. *State, to Use of Cardin*, v. *McClellan et al.* (1905), — Tenn. —, 85 S. W. Rep. 267.

The principal case is noteworthy in that the question involved as to the time of accrual of the action has never before been passed upon by this court. And the authorities, upon the doctrine enunciated, are conflicting. *State ex rel. Daniel et al.* v. *Grizzard*, 117 N. C. 105; *Betts* v. *Norris*, 21 Me. 314, in which latter case a strong dissenting opinion supports the holding in the principal case. These decisions seem to overlook the essential elements necessary to actions against public officers. MECHEM, PUBLIC OFFICERS, § 674. The case of *Wilcox et al.* v. *Plummer's Executors*, 4 Pet. 172, is frequently cited as opposed to the principal holding. But this action was based upon a breach of contract arising out of the relation of attorney and client, and did not involve a neglect of official duty. Hence it was held a cause of action immediately resulted from the breach, which is consistent with the general rule. So, too, *Kerns* v. *Schoonmaker*, 4 Ohio 331, and *Lathrop* v. *Snellbaker*, 6 Ohio St. Rep. 276, are cited as contrary to the principal case; but a distinction is to be noted here, in that the plaintiffs, in these cases, could have themselves determined the invalidity of the bonds in suit; and upon execution issued their right of action against the defendant justices of the peace would have been complete. *Steel & Johnson* v. *Bryant et al.*, 49 Ia. 116; followed in *Moore* v. *McKinley et al., Ex's, et al.*, 60 Ia. 367; *Hartford* v. *Waterman*, 26 Conn. 324; *People, to the Use of Tritch*, v. *Cramer*, 15 Colo. 155, are relied on in the decision of the principal case, and seem to represent the weight of reason, if not of authority.

SALES—PASSING OF TITLE IN GOODS UNIDENTIFIED—NOTICE OF RESALE.—Defendant and plaintiff entered into a contract whereby the former bought a large quantity of linseed oil from the plaintiff. The oil was to be delivered in carload lots of not less than one nor more than three cars during any one month. Plaintiff kept the oil in tanks from which it was drawn to fill such orders as he might receive. Defendant, complaining that he lacked room to store the oil, failed to send orders for the monthly shipments as per agreement. Plaintiff, after shipping one carload without orders, failed to make further shipments and finally resold the remainder of the oil. In an action to recover damages for breach of contract, *Held*, that defendant had acquired no title to the oil, as it had not been identified and separated for him from the common mass; that plaintiff rested under no obligation to give notice of resale to defendant; and that the difference between the contract price and the market price, at the time of the breach of contract, constituted the measure of damages. *Kellogg* v. *Frohlich* (1905), — Mich. —, 102 N. W. Rep. 1057.

The generally accepted rule, as to the sale of goods, which form a part of a uniform mass, is that no title passes until a specific portion has been appropriated to the contract. *White et al.* v. *Wilks,* 5 Taunt. 176; *New England Dressed Meat & Wool Co.* v. *Standard Worsted Co.,* 165 Mass. 328, 52 Am. St. Rep. 516; *Goldberg* v. *Bussey* (Tex.) 47 S. W. 49; *Warten* v. *Strane,* 82 Ala. 311. There are, however, many courts which hold that no such separation is requisite to the passing of title, provided it was the intention of the parties that title should pass. *Newhall* v. *Langdon,* 39 Ohio St. 87, 48 Am. Rep. 426; *Welch* v. *Spies,* 103 Ia. 389; *Kimberly et al.* v. *Patchin,* 19 N. Y. 330, 75 Am. Dec. 334; *Hurff* v. *Hires,* 40 N. J. L. 581, 29 Am. Rep. 282. As to resale of the property, by the vendor, in case the buyer refuses to carry out his contract, by accepting and paying for the goods, the general rule is that the vendor may resell the goods and recover, of the vendee as damages, the difference between the price contracted for and that received from the resale. *McCord* v. *Laidley,* 87 Ga. 221; *William's* v. *Robb,* 104 Mich. 242; *Sanders* v. *Bond et al.* (Ky.), 66 S. W. 635; *Cole* v. *Zucarello,* 104 Tenn. 64. As to whether notice of resale must be given in the case of a breach of an executory contract, the cases are not wholly in harmony. Some courts take the position that no notice of resale need be given to tne vendee. *Wrigley* v. *Cornelius,* 162 Ill. 92, 44 N. E. 406; *Hickock* v. *Hoyt,* 33 Conn. 553 The rule, in other jurisdictions, is that the seller can not recover of the buyer the difference between the contract price and the sum received from the resale, unless notice of the determination to resell is given to the buyer. *Davis Sulphur Ore Co.* v. *Atlanta Guano Co.,* 109 Ga. 607, 34 S. E. 1011; *Leonard* v. *Portier et al.* (Tex.), 15 S. W. 414.

STATUTE OF FRAUDS—CONTRACT TO LEASE—SPECIFIC PERFORMANCE.—Bill for specific performance of an alleged agreement for a lease. *Held,* A draft of the lease signed by the defendant but not delivered to the plaintiff was admissible in evidence to show the details of the proposed lease previously executed by both parties, the papers, taken together, satisfying the requirements of the statute of frauds. *Charlton* v. *Columbia Real Estate Co.* (1905), — N. J. —, 60 Atl. Rep. 192.

Four judges dissented from the majority opinion which reverses the former holding reported in 54 Atl. Rep. 444. Had the previous agreement been wholly in parol the dissenting opinion would have had the weight of judicial sanction. *Kopp* v. *Reiter,* 146 Ill. 437, 22 L. R. A. 273; *Day* v. *LaCasse,* 85 Me. 242; *Swan* v. *Burnette,* 89 Cal. 564; *Montauk Assn.* v. *Daly,* 171 N. Y. 659. There are, however, decisions to the contrary. *McGee* v. *Blankenslip,* 95 N. Car. 563; *Bowles* v. *Woodson,* 6 Gratt. 78; *Drury* v. *Young,* 58 Md. 546. In *Freedland* v. *Charnley,* 80 Ind. 132, and in *Myrick* v. *Segar,* 102 Ia. 744, an undelivered deed was held inadmissable though supplying the needed details of a prior written agreement. The great weight of authority, however, supports the principal case in that if all the papers taken together contain the completed terms of a contract and each is signed by the party to be charged the delivery of all of them is unnecessary to render the contract enforcible. *Thayer* v. *Luce,* 22 O. St. 62; *Jenkins* v. *Harrison,* 65 Ala. 345; *Leonard* v. *Woodruff,* 23 Utah 495; *Jelko* v. *Barrett,* 52 Miss. 315; *Bayne* v. *Wiggins,* 139 U. S. 210.